

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	CHAPTER 11
	:	
ROTONDO WEIRICH ENTERPRISES, INC.	:	Bky. No. 15-16146(ELF)
ROTONDO WEIRICH, INC.	:	
	:	JOINTLY ADMINISTERED
Debtors	:	
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ROTONDO WEIRICH ENTERPRISES, INC.	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY NO. 17-233(ELF)
	:	
TOM DAVIS	:	
	:	
Defendant	:	
	:	

**MOTION OF PLAINTIFF FOR DEFAULT
JUDGMENT AGAINST THE DEFENDANT**

Rotondo Weirich Enterprises, Inc. (the “Plaintiff”), by and through its counsel, Maschmeyer Karalis P.C., hereby moves this Honorable Court for the entry of a default judgment against Tom Davis (the “Defendant”), and in support thereof respectfully avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.
2. The venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. § 1409(a).
3. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b).
4. The statutory predicates for the relief sought herein are Fed.R.Bankr.P. 7055 and Fed.R.Civ.P. 55.

PROCEDURAL BACKGROUND

5. On August 27, 2015 (the “Petition Date”), the Plaintiff and certain affiliates filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

6. An Official Committee of Unsecured Creditors has been appointed in the Plaintiff’s Chapter 11 case.

7. No trustee or examiner has been appointed in the Plaintiff’s Chapter 11 case.

COMPLAINT

8. On August 16, 2017, the Plaintiff filed a complaint (the “Complaint”) against the Defendant. The Complaint seeks the avoidance and recovery of preferential transfers in the amount of \$47,905.00 pursuant to 11 U.S.C. §§ 547 and 550.

9. On August 17, 2017, a summons (the “Summons”) was issued by the Clerk of the Bankruptcy Court pursuant to which the Defendant was required to serve an answer or other responsive pleading to the Complaint upon counsel for the Plaintiff and to file said answer or other responsive pleading with the Bankruptcy Court on or before September 16, 2017 (the “Response Deadline”) [Adversary Docket No. 2]. A copy of the Summons is attached hereto and made a part hereof as Exhibit “A.”

10. On August 17, 2017, a copy of the Summons, together with a copy of the Complaint, was served on the Defendant by United States First Class Mail, postage prepaid, in accordance with Fed.R.Bankr.P. 7004(b). A Certificate of Service was filed with this Court on August 24, 2017 [Adversary Docket No. 3]. A copy of the Certificate of Service is attached hereto as Exhibit “B” and made a part hereof.

11. The Defendant has failed to timely serve a proper answer or other responsive pleading to the Complaint upon counsel for the Plaintiff by the Response Deadline.

12. The Defendant has failed to timely file with the Bankruptcy Court a proper answer or other responsive pleading to the Complaint as is evidenced by the docket in this adversary proceeding attached hereto and made a part hereof as Exhibit "C."

13. The Defendant is not in the military service of the United States, nor any State nor Territory thereof or its allies as defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and the amendments thereto. The Affidavit of Non-Military Service is attached hereto as Exhibit "D" and made a part hereof.

14. The Plaintiff is entitled to a default judgment against the Defendant.

RELIEF REQUESTED

15. With respect to a default judgment, pursuant to Fed.R.Civ.P. 55(a), made applicable to this proceeding by Fed.R.Bankr.P. 7055:

[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

16. In the present case, the Defendant has failed to respond to the Complaint by the Response Deadline. Therefore, the Plaintiff is requesting that this Honorable Court enter a default judgment against the Defendant.

[INTENTIONALLY LEFT BLANK]

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter a default judgment against the Defendant in the amount of \$47,905.00 and for such other and further relief as this Court deems just.

Respectfully submitted,

MASCHMEYER KARALIS P.C.

By: /s/ Robert W. Seitzer
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Attorneys for the Plaintiff

Dated: October 6, 2017